

ASSEMBLY BILL

No. 1160

Introduced by Assembly Member Fong

(Principal coauthor: Senator Cedillo)

**(Coauthors: Assembly Members Coto, Fuentes, Furutani, Lieu,
and Torres)**

(Coauthor: Senator Yee)

February 27, 2009

An act to amend Section 1632 of the Civil Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1160, as introduced, Fong. Contracts: translation.

Existing law requires a person in a trade or business who negotiates specified contracts or agreements primarily in the languages of Spanish, Chinese, Tagalog, Vietnamese, or Korean to deliver to the other party, prior to execution of the contract or agreement, a translation of the contract or agreement in the applicable foreign language, except as specified. Under existing law, failure to comply with these provisions entitles the aggrieved party to rescind the contract or agreement. Under existing law, these provisions apply to specified loans or extensions of credit subject to the Industrial Loan Law and the California Finance Lenders Law.

This bill would expand the scope of those provisions to instead require any person in a trade or business who, in the course of entering into any of the specified contracts or agreements, negotiates any material term in those languages, to deliver a translation, as described above, or a translation of one or more of the approved disclosures or forms, as specified. The bill would also make specified translation requirements applicable to loans or extensions of credit secured by real property and

leases, subleases, and rental contracts or agreements, as specified. The bill would authorize civil penalties against any person who fails to deliver the translation, to be imposed by a court in an action commenced within 3 years of the transaction. The bill would provide for administrative penalties against specified licensed persons for violations of these provisions. The bill would require the Department of Corporations and the Department of Financial Institutions to create new forms for these purposes based on specified forms of the Department of Real Estate. The bill would exempt federally chartered banks and credit unions from these provisions.

These provisions would be operative on January 1, 2010, or 60 days following the issuance of forms by both the Department of Corporations and the Department of Financial Institutions, whichever is later.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1632 of the Civil Code, as amended by
2 Section 1 of Chapter 278 of the Statutes of 2008, is amended to
3 read:
4 1632. (a) The Legislature hereby finds and declares all of the
5 following:
6 (1) This section was enacted in 1976 to increase consumer
7 information and protections for the state's sizeable and growing
8 Spanish-speaking population.
9 (2) Since 1976, the state's population has become increasingly
10 diverse and the number of Californians who speak languages other
11 than English as their primary language at home has increased
12 dramatically.
13 (3) According to data from the United States Census of 2000,
14 of the more than 12 million Californians who speak a language
15 other than English in the home, approximately 4.3 million speak
16 an Asian dialect or another language other than Spanish. The top
17 five languages other than English most widely spoken by
18 Californians in their homes are Spanish, Chinese, Tagalog,
19 Vietnamese, and Korean. Together, these languages are spoken
20 by approximately 83 percent of all Californians who speak a
21 language other than English in their homes.

(b) Any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into any of the following contracts or agreements listed in paragraphs (1) to (7), inclusive, of this subdivision and negotiates any material terms in Spanish, Chinese, Tagalog, Vietnamese, or Korean, whether orally or in writing, shall deliver to the other party to the contract or agreement and prior to the execution thereof, *either (1) a translation of the contract or agreement in the language in which the contract or agreement was negotiated, which includes a translation of every term and condition in that contract or agreement; or (2) a translation of one or more of the approved disclosures, forms, or both discussed in subdivisions (c) to (e), inclusive, and (m), as applicable to the specific contract or agreement at issue. Each translation shall bear an acknowledgment of receipt to be signed by the contracting consumer prior to consummation of the transaction. Persons subject to this subdivision shall retain a true and correct copy of all signed transactions on file for a period of five years or the length of the contract or agreement, whichever is longer.*

(1) A contract or agreement subject to the provisions of Title 2 (commencing with Section 1801) of, and Chapter 2b (commencing with Section 2981) and Chapter 2d (commencing with Section 2985.7) of Title 14 of, Part 4 of Division 3.

(2) A loan or extension of credit secured other than by real property, or unsecured, for use primarily for personal, family or household purposes.

(3) A lease, sublease, rental contract or agreement, or other term of tenancy contract or agreement, for a period of longer than one month, covering a dwelling, an apartment, or mobilehome, or other dwelling unit normally occupied as a residence.

(4) ~~Notwithstanding paragraph (2), a~~ A loan or extension of credit for use primarily for personal, family or household purposes where the loan or extension of credit is subject to the provisions of Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, or ~~Division 7 (commencing with Section 18000), or Division 9 (commencing with Section 22000) of the Financial Code.~~ *is made by a supervised financial organization.*

(5) Notwithstanding paragraph (2), a reverse mortgage as described in Chapter 8 (commencing with Section 1923) of Title 4 of Part 4 of Division 3.

(6) A contract or agreement, containing a statement of fees or charges, entered into for the purpose of obtaining legal services, when the person who is engaged in business is currently licensed to practice law pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

~~(7) A foreclosure consulting contract subject to Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3.~~

(7) This section shall not apply to federally chartered banks or credit unions.

~~(c) Notwithstanding subdivision (b), for~~ For a loan subject to this part and to Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, the delivery of a translation of the ~~statement~~ *statements, disclosures, or both* to the borrower required by ~~Section 10240~~ *Section 10240 or 10241* of the Business and Professions Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, is in compliance with subdivision (b).

~~(d) At the time and place where a lease, sublease, or rental contract or agreement described in subdivision (b) is executed, notice in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated shall be provided to the lessee or tenant.~~

~~(e) Provision by a supervised financial organization of a translation of the disclosures required by Regulation M or Regulation Z, and, if applicable, Division 7 (commencing with Section 18000) or Division 9 (commencing with Section 22000) of the Financial Code in any of the languages specified in subdivision (b) in which the contract or agreement was negotiated, prior to the execution of the contract or agreement, shall also be deemed in compliance with the requirements of subdivision (b) with regard to the original contract or agreement.~~

(d) For a loan or extension of credit secured other than by real property, or unsecured for use primarily for personal, family, or household purposes, delivery by a supervised financial organization of a translation of the disclosures required by

1 *Regulation M or Regulation Z, and, if applicable, Division 7*
2 *(commencing with Section 18000) or Division 9 (commencing with*
3 *Section 22000) of the Financial Code in any of the languages*
4 *specified in subdivision (b) in which the contract or agreement*
5 *was negotiated, prior to the execution of the contract or agreement,*
6 *is in compliance with subdivision (b).*

7 (1) “Regulation M” and “Regulation Z” mean any rule,
8 regulation, or interpretation promulgated by the Board of
9 Governors of the Federal Reserve System and any interpretation
10 or approval issued by an official or employee duly authorized by
11 the board to issue interpretations or approvals dealing with,
12 respectively, consumer leasing or consumer lending, pursuant to
13 the Federal Truth in Lending Act, as amended (15 U.S.C. Sec.
14 1601 et seq.).

15 (2) As used in this section, “supervised financial organization”
16 means a bank, savings association as defined in Section 5102 of
17 the Financial Code, credit union, or holding company, affiliate, or
18 subsidiary thereof, or any person subject to Article 7 (commencing
19 with Section 10240) of Chapter 3 of Part 1 of Division 4 of the
20 Business and Professions Code, or Division 7 (commencing with
21 Section 18000) or Division 9 (commencing with Section 22000),
22 or Division 20 (commencing with Section 50000) of the Financial
23 Code.

24 (e) *For a loan or extension of credit secured by real property*
25 *made by a supervised financial organization, as described in*
26 *paragraph (4) of subdivision (b), delivery of the form disclosures*
27 *described in subdivision (m) is in compliance with subdivision (b).*
28 *Delivery of such disclosures is required whether or not the*
29 *transaction is also subject to the requirements of Article 7*
30 *(commencing with Section 10240) of Chapter 3 of Part 1 of*
31 *Division 4 of the Business and Professions Code, and subdivision*
32 *(c) of this section.*

33 *The supervised financial organization shall provide the forms*
34 *to the borrower no later than seven calendar days before closing,*
35 *and, if any of the loan terms summarized change after provision*
36 *of the translation but prior to consummation of the loan, the*
37 *supervised financial organization shall provide an updated version*
38 *of the forms before closing.*

39 (f) (1) At the time and place where ~~a~~ *an applicable contract or*
40 ~~agreement described in paragraph (1) or (2) of subdivision (b) is~~

1 executed, a notice in any of the languages specified in subdivision
2 (b) in which the contract or agreement was negotiated shall be
3 conspicuously displayed to the effect that the person described in
4 subdivision (b) is required to provide a contract or agreement in
5 the language in which the contract or agreement was negotiated,
6 or a translation of the disclosures required by law in the language
7 in which the contract or agreement was negotiated, as the case
8 may be. If a person described in subdivision (b) is executed, a
9 notice in the language that the contract or agreement was
10 negotiated, shall be conspicuously displayed, that states the
11 translation requirements in subdivision (b). If the person does
12 business at more than one location or branch, the requirements of
13 this section shall apply only with respect to the location or branch
14 at which the language in which the contract or agreement was
15 negotiated is used.

16 (2) For any loan or extension of credit secured by real property
17 covered by this section, every English contract or agreement shall
18 include the following statement in no smaller than 10-point font
19 and contained in a demarcated rectangle, at the top of the first
20 page of the contract or agreement, translated into Spanish,
21 Chinese, Tagalog, Vietnamese, and Korean: “If you negotiated
22 any important term of this contract in [language], you are entitled
23 by law to have the contract, or a summary of important terms,
24 translated into [language].” This paragraph applies to all
25 contracts specified in this section, regardless of whether any term
26 was negotiated in one of these five languages, and regardless of
27 whether the business person conducts business in any one of these
28 five languages.

29 (g) At the time and place where a lease, sublease, or rental
30 contract or agreement described in subdivision (b) is executed,
31 notice in any of the languages specified in subdivision (b), in which
32 the contract or agreement was negotiated, shall be provided to
33 the lessee or tenant.

34 ~~(g) The term~~

35 (h) (1) As used in this section, “contract” or “agreement,” as
36 ~~used in this section,~~ means the document creating the rights and
37 obligations of the parties and includes any subsequent document
38 making substantial changes in the rights and obligations of the
39 parties. ~~The term “contract”~~ “Contract” or “agreement” does not
40 include any subsequent documents authorized or contemplated by

1 the original document such as periodic statements, sales slips or
2 invoices representing purchases made pursuant to a credit card
3 agreement, a retail installment contract or account or other
4 revolving sales or loan account, memoranda of purchases in an
5 add-on sale, or refinancing of a purchase as provided by, or
6 pursuant to, the original document.

7 ~~The term “contract”~~

8 (2) “Contract” or “agreement” does not include a home
9 improvement contract as defined in Sections 7151.2 and 7159 of
10 the Business and Professions Code, nor does it include plans,
11 specifications, description of work to be done and materials to be
12 used, or collateral security taken or to be taken for the retail buyer’s
13 obligation contained in a contract for the installation of goods by
14 a contractor licensed pursuant to Chapter 9 (commencing with
15 Section 7000) of Division 3 of the Business and Professions Code,
16 if the home improvement contract or installation contract is
17 otherwise a part of a contract described in subdivision (b).

18 ~~Matters~~

19 (3) *Matters* ordinarily incorporated by reference in contracts or
20 agreements as described in paragraph (3) of subdivision (b),
21 including, but not limited to, rules and regulations governing a
22 tenancy and inventories of furnishings to be provided by the person
23 described in subdivision (b), are not included in the term “contract”
24 or “agreement.”

25 ~~(h)~~

26 (i) (1) This section does not apply to any person engaged in a
27 trade or business who negotiates primarily in a language other than
28 English, as described by subdivision (b), if the party with whom
29 he or she is negotiating is a buyer of goods or services, or receives
30 a loan or extension of credit, or enters an agreement obligating
31 himself or herself as a tenant, lessee, or sublessee, or similarly
32 obligates himself or herself by contract or lease, and the party
33 negotiates the terms of the contract, lease, or other obligation
34 through his or her own interpreter.

35 ~~As~~

36 (2) *As* used in this subdivision, “his or her own interpreter”
37 means a person, not a minor, able to speak fluently and read with
38 full understanding both the English language and any of the
39 languages specified in subdivision (b) in which the contract or
40 agreement was negotiated, and who is not employed by, ~~or whose~~

1 ~~service is~~ and whose services are not made available through, the
2 person engaged in the trade or business.

3 (i)

4 (j) Notwithstanding subdivision (b), a translation may retain the
5 following elements of the executed English-language contract or
6 agreement without translation: names and titles of individuals and
7 other persons, addresses, brand names, trade names, trademarks,
8 registered service marks, full or abbreviated designations of the
9 make and model of goods or services, alphanumeric codes,
10 numerals, dollar amounts expressed in numerals, dates, and
11 individual words or expressions having no generally accepted
12 non-English translation. ~~It is permissible, but not required, that~~
13 ~~this translation be signed.~~

14 (j)

15 (k) The terms of the contract or agreement which is executed
16 in the English language shall determine the rights and obligations
17 of the parties. However, the translation of the contract or the
18 disclosures required by ~~subdivision (e)~~ subdivisions (c) to (e),
19 inclusive, and (m), in any of the languages specified in subdivision
20 (b) in which the contract or agreement was negotiated shall be
21 admissible in evidence ~~only~~ to show that no contract was entered
22 into because of a substantial difference in the material terms and
23 conditions of the contract and the translation.

24 (l) (1) Any person who fails, prior to execution of the contract
25 or agreement, to deliver the translation required by subdivision
26 (b), is liable to the person aggrieved, in an amount equal to the
27 sum of:

28 (A) Any actual damage sustained by the person as a result of
29 the failure.

30 (B) (i) In the case of a loan or extension of credit secured other
31 than by real property, or unsecured, for use primarily for personal,
32 family, or household purposes, in an amount equal to 50 percent
33 of the total amount of payments under the loan or extension of
34 credit, except that the liability under this subparagraph shall not
35 be less than two hundred dollars (\$200) nor greater than five
36 thousand dollars (\$5,000) per violation; (ii) in the case of a loan
37 or extension of credit secured by real property, in an amount not
38 less than five hundred dollars (\$500) nor greater than ten thousand
39 dollars (\$10,000) per violation; and (iii) in the case of any other
40 contract or agreement, in an amount not less than two hundred

1 dollars (\$200) nor greater than three thousand dollars (\$3,000)
2 per violation.

3 (C) In the case of any successful action to enforce the foregoing
4 liability or in any action in which a person is determined to have
5 a right of rescission under paragraph (6) of this subdivision, the
6 costs of the action, together with a reasonable attorney's fee as
7 determined by the court.

8 (2) Any person who fails to comply with the notice requirements
9 of either subdivision (f) or (g) is liable to the contracting consumer
10 in an amount equal to five hundred dollars (\$500) per violation,
11 plus the costs of the action, together with a reasonable attorney's
12 fee as determined by the court.

13 (3) Any action brought under paragraphs (1) and (2) shall be
14 commenced not more than four years from the date of the
15 transaction.

16 (4) (A) In addition to any civil liability, upon a finding that any
17 licensed person has violated subdivision (b), a court shall impose
18 a penalty in the amount of two thousand five hundred dollars
19 (\$2,500) for the first violation, five thousand dollars (\$5,000) for
20 the second violation, ten thousand dollars (\$10,000) for the third
21 violation, and twenty-five thousand dollars (\$25,000) each for
22 each subsequent violation.

23 (B) In addition to any civil liability, upon a finding that any
24 licensed person has violated subdivision (f) or (g), a court shall
25 impose a penalty in the amount of one thousand dollars (\$1,000)
26 for the first violation, two thousand five hundred dollars (\$2,500)
27 for the second violation, five thousand dollars (\$5,000) for the
28 third violation, and ten thousand dollars (\$10,000) each for each
29 subsequent violation.

30 (C) The amounts collected under subparagraph (A) or (B) of
31 paragraph (4) shall be deposited in the appropriate fund of the
32 licensing agency to be used by that licensing agency, subject to
33 appropriation by the Legislature, for the purposes of education
34 and enforcement in connection with this section.

35 (D) "Licensed person" means a real estate broker licensed
36 under the Real Estate Law (Part 1 (commencing with Section
37 10000) of Division 4 of the Business and Professions Code), a
38 finance lender or broker licensed under the California Finance
39 Lenders Law (Division 9 (commencing with Section 22000) of the
40 Financial Code), a residential mortgage lender licensed under the

1 *California Residential Mortgage Lending Act (Division 20*
2 *(commencing with Section 50000) of the Financial Code), a*
3 *commercial or industrial bank organized under the Banking Law*
4 *(Division 1 (commencing with Section 99) of the Financial Code),*
5 *a savings association organized under the Savings Association*
6 *Law (Division 2 (commencing with Section 5000) of the Financial*
7 *Code), and a credit union organized under the California Credit*
8 *Union Law (Division 5 (commencing with Section 14000) of the*
9 *Financial Code).*

10 *Nothing in this section shall be construed to prevent any*
11 *enforcement by a governmental entity against any person who*
12 *originates a loan and who is exempt or excluded from licensure*
13 *by all of the licensing agencies, based on a violation of any*
14 *provision of this section. Nothing in this section shall be construed*
15 *to prevent the Department of Real Estate from enforcing this*
16 *section against a licensed salesperson employed by a licensed real*
17 *estate broker as if that salesperson were a licensed person under*
18 *this section. A licensed person includes any person engaged in*
19 *any practice governed by the aforementioned laws for which a*
20 *license is required, but whose license is invalid, suspended, or*
21 *revoked, or where no license has been obtained.*

22 (5) (A) A licensing agency may, after appropriate notice and
23 opportunity for hearing, by order levy administrative penalties
24 against a person who violates any provision of this section, and
25 the person shall be liable for administrative penalties, in the
26 amounts described in subparagraphs (A) and (B) of paragraph
27 (4). Except for licensing agencies exempt from the provisions of
28 the Administrative Procedure Act, any hearing shall be held in
29 accordance with the Administrative Procedure Act (Chapter 5
30 (commencing with Section 11500) of Part 1 of Division 3 of Title
31 2 of the Government Code), and the licensing agency shall have
32 all the powers granted under that act. A licensing agency may not
33 impose any penalty for a particular violation if a court has already
34 imposed a penalty for that violation pursuant to subparagraphs
35 (A) and (B) of paragraph (4).

36 (B) A licensing agency may exercise any and all authority and
37 powers available to it under any other provisions of law, to
38 administer and enforce this section, including, but not limited to,
39 investigating and examining the licensed person's books and
40 records, and charging and collecting the reasonable costs for these

1 activities. The licensing agency shall not charge a licensed person
2 twice for the same service. Any civil, criminal, and administrative
3 authority and remedies available to the licensing agency pursuant
4 to its licensing law may be sought and employed in any
5 combination deemed advisable by the licensing agency to enforce
6 the provisions of this section.

7 (C) Any licensed person who violates any provision of this
8 section shall be deemed to have violated that person's licensing
9 law.

10 (D) After any action under this subdivision resulting in a finding
11 of liability or any administrative action pursuant to this paragraph,
12 the licensing agency may bring a proceeding to suspend the license
13 of the licensed person for not less than six months and not more
14 than three years. After any action under this subdivision resulting
15 in a second or subsequent finding of liability, or any administrative
16 action pursuant to this paragraph on a second or subsequent
17 violation of this section, the licensing agency may bring a
18 proceeding to permanently revoke the license of the licensed person
19 or impose any lesser licensed sanction for at least three years.

20 (6) (A) In addition to the civil liability set forth in paragraphs
21 (1) and (2), prior to execution of the contract or agreement, to
22 deliver a materially complete translation of the contract, or of any
23 of the approved alternative disclosures, forms, or both required
24 by subdivision (b), the person aggrieved may rescind the contract
25 or agreement in the manner provided by this section. When the
26 contract for a consumer credit sale or consumer lease which has
27 been sold and assigned to a financial institution is rescinded
28 pursuant to this section, the consumer shall make restitution to
29 and have restitution made by the person with whom he or she made
30 the contract, and shall give notice of rescission to the assignee.
31 Notwithstanding that the contract was assigned without recourse,
32 the assignment shall be deemed rescinded and the assignor shall
33 promptly repurchase the contract from the assignee.

34 (B) With respect to mortgage loan contracts covered by this
35 section, the aggrieved person's right to rescind shall expire ten
36 years after the date of the contract, or, for any adjustable rate
37 mortgage contracts, the right to rescind shall expire after ten years,
38 or ninety days following the expiration of the fixed rate term,
39 whichever is later.

1 (m) *The Department of Corporations and the Department of*
2 *Financial Institutions shall modify the Department of Real Estate's*
3 *Forms 883 and 885 solely to delete information that is inapplicable*
4 *to lender-originated loans or that is otherwise inapplicable. These*
5 *modified forms shall be made available in each of the languages*
6 *set forth in subdivision (b) for use by a supervised financial*
7 *organization to summarize the terms of a mortgage loan pursuant*
8 *to subdivision (e).*

9 ~~(k)~~

10 (n) Upon a failure to comply with the provisions of this section,
11 the person aggrieved may rescind the contract or agreement in the
12 manner provided by this chapter. When the contract for a consumer
13 credit sale or consumer lease which has been sold and assigned to
14 a financial institution is rescinded pursuant to this subdivision, the
15 consumer shall make restitution to and have restitution made by
16 the person with whom he or she made the contract, and shall give
17 notice of rescission to the assignee. Notwithstanding that the
18 contract was assigned without recourse, the assignment shall be
19 deemed rescinded and the assignor shall promptly repurchase the
20 contract from the assignee.

21 SEC. 2. The requirements applying to supervised financial
22 organizations, as well as all other amendments herein, shall be
23 operative beginning on January 1, 2010, or 60 days following
24 issuance of forms by the Department of Corporations and the
25 Department of Financial Institutions, whichever is earlier.

26 SEC. 3. The provisions of this act are severable. If any
27 provision of this act or its application is held invalid, that invalidity
28 shall not affect other provisions or applications that can be given
29 effect without the invalid provision or application.